D.B.CIVIL SPECIAL APPEAL NO. 234/2006
Dr. S.P.Singh v. J.N.V.University, Jodhpur & ors.
D.B.CIVIL SPECIAL APPEAL NO. 118/2006
J.N.V.University, Jodhpur & anr. v. Dr. Kamlesh Purohit & anr.
D.B.CIVIL SPECIAL APPEAL NO. 235/2006
Dr. Narendra Awasthi v. J.N.V.University, Jodhpur & ors.

Date of order : 27.04.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

Shri P.S.Bhati for the appellant in appeal no. 234/2006
Shri S.D.Purohit for the respondent in appeal no.118/2006
Shri J.P.Joshi for the University.

These three appeals have come up for hearing in the stay matter. The learned Single Judge by similar orders dated 15.4.2006 confirmed the interim stay of Annexure 2 . By the order contained in Annexure 2 dated 3.1.2006, Heads of Department in different subjects/faculties were appointed. Case of the appellants inter alia is that as a result of stay, the departments have become headless. According to the counsel, stay by itself does not result in revival of the appointment of the previous incumbents on the post. It is also the case of the appellant that under statute 8 (2) of the Statutes of the Jai Narain Vyas University, framed under section 22 of the relevant Act, the tenure of the Head of Department is three years. Further, under statute 8(1)(c)(1)(i) the appointment is to be made from amongst Professors in the subject by rotation by seniority. The statute goes on

to clarify that in case Professor or Professors are not available Readers may be appointed by rotation by seniority and similarly in case of non-availability of both Professor(s) and Reader(s), Lecturer may be appointed as Head of the Department by rotation by seniority.

When the hearing was taken up yesterday, a dispute arose about the availability of regularly selected/ directly recruited Professors and Readers in various subjects. Shri J.P.Joshi appearing for the University today produced a chart from which it appears that out of 49 sanctioned posts of Professors only two regularly selected/directly recruited Professors are in place. Against the remaining posts six Professors promoted under the Career Advancement Scheme (CAS) and one Professor promoted under the Personal Promotion Scheme are working. The remaining 47 posts are vacant. Likewise, out of 122 sanctioned posts of Readers only 28 regularly selected/directly recruited Readers are available. Against the remaining posts, 100 Readers promoted under the Career Advancement Scheme and 7 promoted under the Personal Promotion Scheme are working. The remaining posts are vacant.

In course of hearing our attention was drawn to an order of the Supreme Court in Civil Appeal no. 5987 of 1999 (Jai Narain Vyas University & anr. v. U.R.Nahar & ors.) in support of the submission that persons promoted under the Career Advancement Scheme or

Personal Promotion Scheme cannot claim seniority over regularly selected/directly recruited Professors or Readers. Reliance on the order, in our opinion, in the present context is totally misplaced. The order lays down the rule of seniority as between the regularly selected/directly recruited Professors and Readers on the one hand and Professors and Readers holding ex-cadre posts on the other hand. In the present case we are concerned with the appointment of Heads of Department.

Statute 8(1)(c) so far as relevant reads as under :

> "8.(1)(a) ....
>
> (b) ....
>
> (c) Each Department shall have a Head who shall be appointed in the following order of preference:
>
> (1)(i) Professor in the subject by rotation by seniority.
>
> If a Professor who is Head of the Department under clause (1)(i) above goes on leave without pay/EOL, deputation or he goes on any type of leave for a period of not less than 1 month, the next senior-most Professor shall be appointed Head of the Department for such period as the person appointed under clause 1(i) is on leave. This period shall not count towards the term.
>
> (ii) In case there is no Professor or all Professors are on leave, Readers by

rotation by seniority.If a Reader who is Head of Department under clause 1(ii) above goes on leave without pay/EOL, deputation or he goes on any type of leave for a period of not less than 1 month, the next senior-most Reader shall be appointed Head of the Department for such period as the person appointed under clause 1(ii) is on leave. This period shall not count towards the term.

(iii)In case there is no Professor or Reader or all Professors or Readers are on leave,Lecturers by rotation by seniority.

If a Lecturer who is Head of the Department under clause 1(iii) above goes on leave without pay/EOL, deputation or he goes on any type of leave for a period of not less than 1 month, the next senior-most Lecturer shall be appointed Head of the Department for such period as the persons appointed under clause 1(iii) is on leave. This period shall not count towards the term."

Statute 8(2) prescribes the tenure of appointment and the same may also be quoted as under :-

"(2)(i)The term of appointment shall be 3 years.

(ii)A person appointed as Head of a Department can decline or resign his position as Head at any time during his tenure."

A combined reading of statute 8(1)(c)(1)(i) and statute 8(2)(i)

makes it evident that appointment of Head of Department is to be made by rotation on the basis of seniority.

We have indicated above the availability position of regularly selected/directly recruited Professors and Readers in the University. We are of the view that in view of non availability of regularly selected/directly recruited Professors and Readers, the University has no option but to appoint Head of the Department from amongst those who have been promoted under the Career Advancement or Personal Promotion Schemes , as the case may be – and a regularly selected/directly recruited Professor or Reader cannot be continued as Head of the Department merely because another regularly selected Professor/Reader is not available.

A dispute arose as to what would be the tenure of such appointment. We have no doubt in our mind, having regard to the mandate of statute 8(2)(i) read with 8(1)(c)(1)(i) that the tenure cannot be more than three years. Statute 8(1)(c)(1)(i) lays down in no uncertain terms that the appointment shall be made by rotation by seniority and statute 8(2)(i) fixes the tenure as three years. The University has no option but to appoint the Professor (or in case of non availability of Professor, an Associate Professor/Reader) going by the rule of seniority by rotation for a period of three years.

It appears that in some cases by reason of the appointments

impugned in the connected writ petitions, the tenure of the incumbents was brought to an end even though they had not completed three years. In many other case the incumbents were holding the post beyond the prescribed tenure of three years. Amongst these incumbents are also those whose appointment was extended. That is to say, after expiry of the stipulated period of three years, they were appointed again.

We are of the view that while considering the question of tenure the entire period including extended period will have to be taken into account. If a person has worked for more than three years he must give way to the next senior. It goes without saying that if a person has not worked for three years he will be allowed to continue and to that extent the order dated 3.1.2006 contained in Annexure 2 shall remain stayed.

In course of hearing specific mention was made of the case of Dr. Kamlesh Purohit, respondent in D.B.Civil Special Appeal No. 118/2006. It was stated that he was appointed as Head of the Department in Mechanical Engineering vice Dr. R.K.Karva who had proceeded on leave. Appointment of Dr. Purohit being against leave vacancy of Dr. R.K.Karva, Dr. Kamlesh Purohit cannot continue as Head of the Department. Dr. Karva will be reappointed as Head of the Department provided he has not already completed tenure of

three years. However, the period of leave will not be counted while counting his tenure for the purpose of appointment/continuance as Head of the Department.

The order of the learned Single Judge dated 15.4.2006 is modified to the above extent and the appeals are disposed of accordingly.

(DINESH MAHESHWARI),J. (S.N.JHA), C.J.

Mathur/